

Appl. No.: 09/659,416
Amdt. dated March 28, 2008
Reply to Office Action of January 25, 2008

REMARKS/ARGUMENTS

This amendment is submitted in reply to the Office Action dated January 25, 2008. Claims 47-50 and 66-75 currently stand rejected and are the only claims pending in the present application. Independent claims 47, 49 and 70-75 have been amended to eliminate unnecessary recitations from their respective preambles. Claim 66 has been amended to correct an informality. Claims 74 and 75 have also been amended for improvement in form. No new matter has been added by the amendment.

In light of the amendment and the remarks presented below, Applicant respectfully requests reconsideration and allowance of all now-pending claims of the present application.

Specification Objection

The Office Action objects to the specification and asks Applicant to amend the specification to define the computer-readable medium as tangible medium. Applicant respectfully submits that the specification currently provides many examples of computer-readable medium using terms such as database, hardware, etc., each of which is clearly a tangible medium. Accordingly, Applicant does not believe it is necessary to specifically add the phrase "tangible medium" to define terms that would clearly be understood by one of skill in the art to be tangible media. Thus, Applicant respectfully requests withdrawal of the objection to the specification.

Claim Objections

Claim 66 has each drawn objection for containing an informality by virtue of including an errant period. Applicant has amended claim 66 to correct the informality noted in the Office Action. Accordingly, Applicant respectfully requests that the claim objection be withdrawn.

Claim Rejections - 35 USC §112

Claims 74 and 75 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In this regard, the Office Action asserts that independent claims 74 and 75 recites instructions "capable of" performing various processes, but lacking clarity with respect to the

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features of the claims. Applicant has amended independent claims 74 and 75 to more clearly indicate the features associated with the instructions stored. Accordingly, Applicant respectfully submits that the rejections of independent claims 74 and 75 under 35 U.S.C. §112, second paragraph, are overcome.

Claim Rejections - 35 USC §101

Claims 74 and 75 also stand rejected under 35 U.S.C. §101 as being non-statutory. In this regard, the Office Action asserts that independent claims 74 and 75 recite a computer program product that is not executed by a computer. While Applicant does not believe there is any requirement that a computer program product must be in execution, Applicant has nonetheless amended independent claims 74 and 75 to provide better form and indicate that the instructions include executable portions for performing the various recited features. Accordingly, Applicant respectfully submits that the rejections of independent claims 74 and 75 under 35 U.S.C. §101 are overcome.

Claim Rejections - 35 USC §102

Claims 47-49 and 66-75 stand rejected under 35 U.S.C. §102(a) as being anticipated by Kroening et al. (U.S. Patent No. 6,080,207, hereinafter "Kroening").

Independent claims 47, 70, 72 and 74 each provide, *inter alia*, receiving a configuration upgrade message from a source of a software upgrade. In other words, the message relating to the upgrade is received from the device actually providing the upgrade.

Meanwhile, Kroening is directed to a method for generating a custom configuration for a computer hard drive. The Office Action asserts that the above recited feature is disclosed by virtue of Kroening's description of the order entry BOM (15) communicating with the image builder (10). However, the order entry BOM is clearly disclosed as being the device into which a customer's order is entered to establish a bill of materials (BOM). The BOM merely indicates the desired software configuration selected by the customer (col. 4, lines 8-12). The BOM is then used by the image builder to find a saved configuration or create one corresponding to the desired configuration indicated by the customer. As such, the order entry BOM is not a source

of the software upgrade. Instead, the order entry BOM merely indicates what kind of upgrade is desired. The source of the upgrade is the image builder, which actually receives the BOM in Kroening. Accordingly, there is no configuration upgrade message received from a source of a software upgrade either taught or suggested in Kroening.

Notably, independent claims 49, 71, 73 and 75 do not state that the configuration upgrade message is received from a source of the software upgrade. Instead, independent claims 49, 71, 73 and 75 provide that the message is received from a service provider capable of providing an end service product. As indicated above, the order entry BOM does not provide an end service product. Quite to the contrary, the order entry BOM merely indicates parameters desired in an end service product. The end service product is provided by another device. As such, Kroening fails to teach or suggest that the message is received from a service provider capable of providing an end service product as provided in independent claims 49, 71, 73 and 75.

Due to Kroening's failure to teach or suggest the features above, independent claims 45, 49 and 70-75 are neither anticipated nor obvious in view of Kroening. In addition to the reasons above, Applicant respectfully notes that Kroening also fails to teach or suggest identifying a plurality of users having a contract requiring delivery of the end service product (independent claims 49, 71, 73 and 75) or requiring the software upgrade (independent claims 47, 70, 72 and 74). In this regard, the cited passage of Kroening (col. 5, lines 5-52) has no apparent relationship to identifying a plurality of users, much less users corresponding to the users defined in the claimed invention. Rather, the cited passage only relates to steps for creating a digital image of a hard drive of a single computer.

Given that Kroening fails to teach or suggest identifying a plurality of users meeting the recited criteria above, Kroening also necessarily fails to teach or suggest providing a software upgrade or product information relating to the end service product to respective servers associated with the plurality of users as further provided in the claimed invention. Thus, for all the reasons stated above, Kroening fails to teach or suggest the features of the claimed invention.

Claims 48 and 66-69 each depend directly or indirectly from a respective one of independent claims 47 and 49 and therefore include all the recitations of their respective independent claims. Thus, dependent claims 48 and 66-69 are patentable for at least the same

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reasons given above for independent claims 47 and 49.

Accordingly, the rejections of claims 47-49 and 66-75 are overcome.

Claim Rejections - 35 USC §103

Claim 50 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kroening in view of Kyle (U.S. Patent No. 6,141,681). However, Kyle fails to cure the above noted deficiencies of Kroening and is not cited as such.

Since Kroening and Kyle each fail to teach or suggest the above described features of independent claim 49, any combination of the cited references also fails to teach or suggest such features. Accordingly independent claim 49 is patentable over the cited references taken either individually or in combination. Claim 50 depends directly from independent claim 49 and thus includes all the recitations of independent claim 49. Therefore, dependent claim 50 is patentable for at least those reasons given above for independent claim 49.

Accordingly, Applicant respectfully submits that the rejections of claim 50 is overcome.

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CONCLUSION

In view of the amendments to the claims and the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Chad L. Thorson
Registration No. 55,675

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

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